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January 8, 2016

By CM/ECF

Hon. Charles R. Breyer
United States District Judge
Courtroom 6, 7th Floor
450 Golden Gate Avenue
San Francisco, 94102

**Re: Application for Steering Committee Appointment in *In re Volkswagen*
“Clean Diesel” Marketing, Sales Practices and Products Liability
Litigation, 3:15-MD-2673 CRB (JSC)**

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Dear Judge Breyer:

I have attempted to address my primary strengths which would contribute to the prosecution of this case: experienced trial lawyer (resolution comes from strong and targeted advocacy and not allowing matters to languish), and a long history of representing consumers in and out of court and in the legislature.

Main Criteria For Appointment As Outlined By This Court

Professional Experience Handled complex litigation in the Federal and California State Courts, as well as nationally, for many years. I believe that during my career I have built a reputation that has demonstrated the ability to successfully handle the most challenging matters, as well as an ability to work cooperatively with co-counsel and the attorneys on the other side, as well as work collegially with judges and their staff. I am the founding partner of Aitken Aitken Cohn. I am proud of my firm's reputation for civility and integrity which is crucial to the ultimate success in any major endeavor. A short bio is attached hereto as *Exhibit A*.

As to recent federal experience and judicial references I would note the following:

- *Medical Capital v. Wells Fargo and Bank of New York Mellon* before the **Honorable David O. Carter** (Central District of California- Santa Ana Courtroom 9D Phone: 714-338-4543 Email: DOC_Chambers@cacd.uscourts.gov). I was co-lead trial counsel in a class action which resolved the day before trial and which resulted in a \$219 million recovery against two major banks for 6,600 class members with a pro rata

recovery of \$22,000+ per individual. The settlement was the largest recovery against indenture trustees in U.S. history.

- *In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation* before the **Honorable James V. Selna** (Central District of California- Santa Ana Courtroom 10C Phone: 714-338-2848 Email: jvs_chambers@cacd.uscourts.gov). The firm was appointed as National Liaison Counsel as part of leadership during which I worked with a number of excellent counsel resulting in a \$1.63 billion recovery. As National Liaison Counsel, I coordinated and monitored scores of actions in multiple states and federal jurisdictions, and worked cooperatively with the myriad plaintiff's counsel handling those matters. In this litigation, I represented the class of secondary car dealers and lessors, and with Frank Pitre spent extensive time constructing the unique damages models applicable to that class of plaintiff.
- *In re Experian Data Breach Litigation* before the **Honorable Andrew J. Guilford** (Central District of California- Santa Ana Courtroom 10D Phone: 714-338-4757 Email: AG_Chambers@cacd.uscourts.gov). Advocating for members of the class action involving a data breach of the personal information of over 15 million T-Mobile customers whose information was stored with Experian.
- *Dwight Smith, et al. v. City of Santa Ana, et al.* before the **Magistrate Judge Arthur Nakazato** (Central District of California- Santa Ana Courtroom 6B Phone: 714-338-4756 Email: AN_Chambers@cacd.uscourts.gov). Acted as co-lead counsel in this matter where an action was brought against a local city government on a *pro bono* basis for violations of the First Amendment Rights of a religious organization (to wit, attempts to restrict the Catholic Worker organization from providing shelters and free meals to the homeless).
- *Gutierrez v. United States of America* before **Chief Judge Alicemarie Stotler** (Deceased) (Central District of California- Santa Ana). The trial work resulted in a \$56 million award, the largest judgment against the United States under the Federal Torts Claims Act for a bodily injury matter, which was later affirmed by the 9th Circuit Court of Appeals in 2009.

My professional experience also includes significant responsibilities and acts as board member or advisor to numerous organizations, including: State of California on Consolidation of State Courts and Court Facilities (as appointed by two California Speakers of the Assembly); Federal Judicial Advisory Chair for the Central District (1992 to date) (under appointment of Senator Feinstein) regarding the appointment of Federal District Judges; Lawyer Representative to the Ninth Circuit Judicial Conference for the Central District of California (2008-2013).

Willingness to commit and adequate resources: Both myself and my firm have a reputation of honoring its commitments both personal and professional. The quality and number of our lawyers and our excellent support staff, combined with

our balanced work load created by careful case selection, strongly contributes to the firm's ability to assume this challenging matter as a member of the Steering Committee. This will be a time consuming matter, and we have a history of success in time consuming activities (both compensated and pro bono). We believe in the old adage, "If you want something to get done, get a busy person to do it."

In addition, my firm has the resources – individually and collectively – to participate in the litigation of a complex case of this magnitude. I can and will devote the time and personnel needed to match any challenge of defense counsel. We have a demonstrated track record of spending the necessary resources to finance litigation of large contingent fee cases, both individual, MDL and class, which form the backbone of our practice.

In the current matter, we have filed a class action on behalf of the individual owners of the affected Volkswagen vehicles. Additionally, my experience in the *Toyota* litigation discussed above can help protect the plaintiffs who have suffered economic loss as secondary car dealers and leasers.

Please see *Exhibit 2* listing a sampling of respected firms supporting myself for the Plaintiffs' Steering Committee.


Conclusion

- I, as an experienced trial lawyer, am equipped and motivated to help manage this complex litigation in an efficient, organized and collaborative matter.
- Our location make the firm well positioned to represent the significant number of Central District plaintiffs that make up the majority of the class in California as well as help father the witnesses and document located therein.
- Proven communication skills which have led to development and measure of economic loss and punitive damages.
- Though the nexus of these cases weigh heavily to California, I am sensitive to the national basis of this case and will diligently work on behalf of all plaintiffs.

Pardon the lack of humility but one great trial lawyer once said "Humility in a trial lawyer is just another form of hypocrisy."

Very truly yours,

AITKEN ♦ AITKEN ♦ COHN



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